IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 19 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSUKHLAL LAXMANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 19 of 2002

MR KJ KAKKAD for Petitioner Nos.1-2

MR PR ABICHANDANI, APP for Respondent No. 1

MS VANDANA L BHATT for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/02/2003

C.A.V. JUDGEMENT

Present revision has been filed for setting aside the order dated 8-10-2001 passed by learned J.M.F.C.,

Mansa in Criminal Case Nos.428 of 1995 and 392 of 1995.

2. The case in short is that a complaint was lodged by the respondent no.2 against the present petitioners-original accused in the court of learned Judicial Magistrate at Mansa for the offence punishable under Sec.138 of the Negotiable Instruments Act. In all, total three criminal cases were registered namely, criminal Case Nos.43 of 1996, 428 of 1995 and 392 of 1995 being filed by the respondent no.2 and according to petitioners, by the order of the High Court, all the three cases were ordered to be tried jointly. It is their say that the petitioners filed application Ex.110 before the learned Magistrate at Mansa on 31-3-2001. Said matter was kept for hearing and vide order dated 8-10-2001, it was rejected by the learned Magistrate by a reasoned order which is giving rise to prefer the present revision.

3. At the time of admission, following order was passed by this Court (Coram: D.B.Buch, J.):

"Rule returnable on 18/3/2002. Mr.K.G.Sheth, Ld. APP waives service of Rule for the respondent-State. In the meantime ad-interim stay against further prosecution of the criminal case/s in question till next date. D.S. permitted for respondent No.2."

4. Thereafter, this matter was listed from time to time in different courts but could not be finally disposed of and ultimately, it was placed before this Court.

5. Heard learned counsel for the petitioners, Mr.K.J.Kakkad, learned APP, Mr.P.R.Abichandani, for the State and learned counsel, Ms.Vandana L. Bhatt for Respondent No.2.

6. Mr.Kakkad has mainly argued on the points which have been contended in his petition. Relying upon the case reported in 2000(1) G.L.H. U.J. page 2 in the case of Mafatlal Swarupchand Thakker Vs. State of Gujarat, he has argued that learned Magistrate has committed an error in not considering the substantial justice but has resorted to the technicalities which is unwarranted and unjustified in view of the law laid down by this Court.

7. Whereas Ms.Vandana Bhatt, the learned counsel for the respondent No.2, has objected the same on various

grounds. Drawing my attention towards various proceedings initiated by the petitioners in this Court and orders passed therein, from the record and proceedings called for, she has argued that the contentions which have been raised by the learned counsel for the petitioners for quashing the complaint in question have been raised therein and it is nothing but one more attempt made by the petitioners for delaying the proceedings initiated by the complainant in the year 1995. She has also argued that though application Ex.110 has been filed before the court below in the month of March, 2000, same has not been argued by the learned counsel for the petitioners till 8-10-2001 and, therefore, ultimately Court below had no other alternative but to pass the impugned order. According to her, the application which has been submitted by the petitioners before the court below was for the purpose of delaying the proceedings and they succeeded in the same and thereafter, they have taken this matter before this Court in the month of January, 2002. She has contended that the petitioners have smartly not mentioned the details of previous petitions filed by them before this Court. Ultimately, she has requested that this revision may be rejected and specific direction may be given to the court below to dispose of the criminal cases on day-to-day basis.

7.1 She has also argued that law cannot be resorted to, and the procedural aspect of legal proceedings cannot be permitted to perpetuate injustice and hence, some special cost may be awarded to the respondent No.2-complainant. She has relied upon the case of Rajappa Hanamantha Rajoji Vs. Mahadev Channabasappa and Others, AIR 2000 S.C. 2108. She has also relied upon T. Arivandandam V. T.V.Satyapal, AIR 1977 SC 2421 more particularly towards para 7 which runs as under:

> "7. We regret the infliction of ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and guiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the cooperation

of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of exparte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy. Petition dismissed."

8. Before I proceed further with the matter, it is required to be mentioned that the petitioners had filed Criminal Misc.Application No.1882 of 1997 before this Court under Sec.482 of the Code of Criminal Procedure challenging the issuance of process by the trial court in the criminal case, in which this Court (Coram : N.N. Mathur, J.) passed the following order on 30/4/1997.

"Learned counsel seeks permission to withdraw this Criminal Misc.Application with a view to apply to the same court for recalling the order of issuing process. Permission granted. Dismissed as withdrawn."

The aforesaid order has been annexed with the record and proceedings at page No.107 as Ex.50.

8.1 Thereafter the petitioners preferred Special Criminal Application Nos.971, 972 and 973 of 1997 before this Court challenging the order passed by the trial court below Ex.49 rejecting the prayer of the petitioners for recalling the order passed by the trial court issuing process in the criminal case. This Court (Coram: R.R.Jain,J, as he then was) rejected the said petition vide order dated 25/6/1997.

8.2 Thereafter, the petitioners preferred Criminal Misc.Application No.6571 of 1997 before this Court under Sec.482 of the Code of Criminal Procedure challenging the notice given by the respondent No.2, which has been rejected by this Court (Coram:M.S.Parikh,J, as he then was) vide order dated 17/11/1997.

8.3 Thereafter, the petitioners preferred Criminal Revision Application Nos.10 and 11 of 1998 challenging the application Ex.56 dated 5/12/1997 filed in Criminal Case No.428 of 1995 and application Ex.42 dated 5/12/1997 filed in Criminal Case No.43 of 1995, contending that in

the said criminal case under Sec.138 of the Negotiable Instruments Act, notice on receipt of information regarding dishonour of cheque is required to be given within stipulated period which is mandatory, which reflects from para para 5 of the said judgement and order passed in Criminal Revision Application Nos.10 and 11 of 1998. Further, in the said judgement and order, this court in para 6 held as under;

> "As per the facts in both the matters, complainant has served notice within prescribed period of 15 days and as such applications are not tenable at law."

Further, this court in para 10 of the said judgement and order further held as under;

> "The petitioners appear to have prolonged the proceedings of Criminal Trial by restoring to different proceedings on various technical aspects and as such I hold that the petitioners shall pay cost of Rs.500/- in each mater to respondent No.2 and Rs.500/to respondent No.1."

8.4 Thereafter, the petitioners preferred Special Criminal Application No.496 of 1999 before this Court, challenging the issuance of arrest warrant. The said petition was disposed of by this Court (Coram : S.K.Keshote, J.) vide order dated 15/6/1999 relying upon the assurance given by the learned counsel for the petitioners that the petitioners will remain present before the trial court on the next date fixed.

8.5 In the present matter, the petitioners have not made any statement regarding earlier litigations relating to this matter which is necessary as per the prevailing practice and procedure of this court. On the contrary, in para 5, it is tactfully stated by the petitioners that they have not approached any other court including the Hon'ble Supreme Court of India for the subject matter of this petition. Thus, the petitioners have suppressed the material facts from this court regarding earlier litigations filed before this Court challenging the issuance of process at the initial stage of the criminal cases filed under Sec.138 of the Negotiable Instruments Act. Even all the earlier petitions, as stated hereinabove, were filed by the petitioners through their learned counsel, Mr.Kakkad and hence, when Mr.Kakkad himself has represented the petitioners in their earlier proceedings initiated before this Court, he ought to have revealed this material fact.

9. Though the above referred various petitions have been filed by the petitioners in this court, details of the same have not been mentioned in this petition though they are duty bound to mention the same especially when in para 5 of this petition learned counsel for the petitioners has stated about non-filing of petition before any other courts as well as the Supreme Court. It was stated by the petitioners in para 5 of the petition as under:

> "[5] The petitioners have not approached any other Court including the Hon'ble Supreme Court of India for the subject matter of this petition."

Thus, it clearly appears that petitioners have smartly not mentioned anything about the proceedings initiated by them in this Court thereby they have misguided the office and hence, in Sr.No.22 of the "Check List", the office has mentioned as "Y". Sr.No.22 reads as under:

> "22. Whether a statement is made about earlier litigation relating to this matter?"

So, by way of tactful statement made in para 5 as mentioned above, petitioners were able to successfully misguide the office.

9.1 In para 8 of the Cri.Misc.Appln.No.6571 of 1997 decided by this Court (Coram: M.S.Parikh,J. as he then was) on 17-11-1997 which has been filed for quashing under Sec.482, Cr.P.C., it has been categorically mentioned that petitioners have not filed any other petition either before this Honourable High Court or before any other Courts including Honourable Supreme Court of India in the subject matter of this petition.

9.2 It appears that Spl.Cri.Appln.No.496 of 1999 decided by this Court (Coram:S.K.Keshote,J.) and Spl.Cri.Appln.No.109 of 1999 decided by this Court (Coram: C.K.Buch,J.) on 15-6-1999 have been filed for cancellation of bail.

9.3 In para 4 of the Cri.Rev.Applns.Nos.10 and 11 of 1998 which has been decided by this Court (Coram:A.K.Trivedi,J., as he then was) on 15-4-1998 which have been filed for quashing under Sec.482, Cr.P.C., nothing has been mentioned about the petition preferred in this Court prior to filing of those petitions.

10. I have gone through the petition. Nowhere it has been mentioned by the petitioners about the initiation of their earlier proceedings in the High Court. It is established that in all the aforereferred proceedings, Mr.K.J.Kakkad, learned counsel, appeared on behalf of the petitioners and, hence, it cannot be said that Mr.K.J.Kakkad was unaware of the previous proceedings initiated in this Court by the very petitioners on the same subject matter.

11. It appears from the record and proceedings and from various litigations filed by the petitioners in this Court that the petitioners are interested either in quashing the complaint and process or in delaying the proceedings and they have succeeded in the same for a period of 7 years. It also appears that learned counsel for the petitioners has tried to mislead the Court practically in all litigations wherein smartly and successfully they have not disclosed anything regarding the details of previous litigations and, therefore, application Ex.110, which has been preferred by the petitioners before the court below for recalling the process, is nothing but one more attempt made by them for quashing the complaint. It is to be noted that after filing of application Ex.110, learned advocate for the petitioners at the trial court did not remain present and ultimately, when the Court passed the order, they preferred this petition making a hue and cry of not affording them any opportunity of hearing though they know that all the points raised by them against issuance of process and quashing the complaint have been dealt with by the trial court as well as this Court 4-5 times in various previous proceedings and, therefore, when the petitioners submitted application Ex.110, they were very well knowing that they cannot raise this point again at this stage and best thing was to give cooperation in completing the trial. Instead of doing so, they have adopted this type of tactics which is required to be curtailed.

12. It is required to be mentioned that this is a glaring example of misuse of the process of law wherein petitioners, after having failed in all their previous litigations for the same subject matter in this Court, have tactfully preferred this petition suppressing their initiation of previous proceedings. Even their learned counsel, who appeared in all the previous litigations, has also smartly avoided disclosing the details of their previous petitions filed before this Court in the petition and hence, the petition is required to be rejected on that ground alone.

13. Having heard the learned counsel for the petitioners and going through the petition, it can safely be said that the contentions raised by the learned counsel for the petitioners before the court below by way of filing application Ex.110 are nothing but repetition of the earlier points raised by them for recalling the complaint and process which have been finally dealt with by this Court and since it was not open for the court below to decide the same, the court below has rightly rejected and when sufficient opportunities have been given to the learned advocate appearing for the petitioner before the court below to remain present and argue out application Ex.110, he did not avail the same and hence, court has no other alternative except to pass the impugned order and, hence, the order passed by the court below upon application Ex.110 is not required to be interfered with in this revision.

14. This Criminal Revision Application is rejected. Rule is discharged. Interim relief stands vacated. Trial Court is directed to dispose of the criminal cases by conducting them on day-to-day basis. Petitioners are directed to remain present before the court below on due dates and give full cooperation in disposing of the criminal cases.

15. It is required to be noted that learned counsel for the petitioners, Mr.K.J.Kakkad, himself has appeared in all previous proceedings initiated by the petitioners in this Court wherein petitioners and their learned counsel have skilfully avoided mentioning details of previous litigations preferred in this Court. In the trial court also, the petitioners were represented by Mr.K.J.Kakkad and hence, it cannot be said that Mr.K.J.Kakkad was unaware of those previous litigations and has been misguided by the petitioners. In these circumstances, I am of the opinion that he is also equally responsible for misguiding the office in circulating the matter by suppressing the details of previous litigations preferred on the same subject matter and hence, the petitioner Nos.1 and 2 and their learned counsel are directed to deposit an amount of Rs.5,000/-(Rupees Five Thousand only) each towards costs before the court below. Out of which, an amount of Rs.10,000/-(Rupees Ten Thousand only) is directed to be paid to the respondent No.2-complainant on proper identification and Rs.5,000/-(Rupees Five Thousand only) to the respondent No.1-State. If they fail to deposit the aforesaid amount, then revenue recovery may be resorted to.

16. Office is directed to forthwith send the record and proceedings to the court below.

(R.P.DHOLAKIA,J.)

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